



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2004

Ms. Marisa Elmore  
Assistant District Attorney  
Dallas County  
1333 North Industrial Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2004-6768

Dear Ms. Elmore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206827.

The Dallas County District Attorney's Office (the "DA") received a request for a copy of the DA's file regarding a particular prosecution of a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.1325 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note that the submitted information contains grand jury subpoenas and bills of indictment. The judiciary is expressly excluded from the requirements of the Public Information Act (the "Act"). Gov't Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Act, is a part of the judiciary, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury, and therefore are also not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983). *But see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). Thus, to the extent that the information at issue is in the custody of the DA as agent of the grand jury, it is not subject to disclosure under the Act.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We also note that the submitted information contains arrest warrants, arrest warrant affidavits, and search warrant affidavits. Article 15.26(a) of the Code of Criminal Procedure provides in relevant part the following:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours.

In addition, article 18.01(b) of the Code of Criminal Procedure provides in relevant part the following:

A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

Based on these provisions, the submitted arrest warrants, arrest warrant affidavits, and search warrant affidavits are deemed public. The exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Division No. 525 (1989) (statutory predecessor). Therefore, you must release the submitted arrest warrants, arrest warrant affidavits, and search warrant affidavits to the requestor.<sup>2</sup>

We now address your argument under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

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<sup>2</sup>We note that we contacted the DA regarding the possible sealing by court order of these records, but to date we have received no indication that any of the records at issue have been sealed. *See generally* Tex. R. Civ. Proc. 76a (procedural mechanism for sealing court records).

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the remaining requested information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the DA has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the remaining requested documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the DA must withhold the remaining submitted information from disclosure under section 552.101 of the Government Code as information made confidential by law.<sup>3</sup>

To conclude, (1) the records kept by the DA as agent of a grand jury are not subject to release under the Act, (2) the arrest warrants, arrest warrant affidavits, and search warrant affidavits are public under articles 15.26 and 18.01 of the Code of Criminal Procedure, and must be released to the requestor, and (3) the remaining submitted information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

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<sup>3</sup>Because we are able to resolve this under section 261.201, we do not address your other arguments for exception regarding the remaining information.

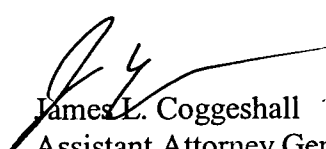
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 206827

Enc. Submitted documents

c: Mr. Joseph E. Byrne  
Byrne, Mead & Smitherman  
5400 LBJ Freeway, Suite 1325  
Dallas, Texas 75240  
(w/o enclosures)